

### **REMARKS**

Favorable reconsideration and allowance of the present application is respectfully requested.

As an initial matter, it was noted in the Office Action that the terminal disclaimer filed on February 19, 2004 for U.S. Application Serial No. 10/027,787 was not received by the Examiner. As such, for the Examiner's convenience, enclosed herewith as Appendix A are copies of the following: (1) the Terminal Disclaimer signed by the assignee of record pursuant to 37 C.F.R. §1.321(c); (2) the Certificate under 37 C.F.R. §3.73, establishing the right of such assignee to act with respect to this application; and (3) the Postcard indicating receipt by the U.S.P.T.O. on February 23, 2004.

Claims 1-15 and 27-40 are currently pending in the present application, including independent claims 1, 10, 27, and 34. Independent claim 1, for instance, is directed to a disposable shoe liner that comprises a laminate structure shaped to approximate the contours of a wearer's foot and also configured to be placed adjacent thereto. The laminate structure comprises a first substrate containing a thermoplastic polymer and a second substrate containing a thermoplastic polymer. At least one of the substrates comprises a nonwoven web. Further, the thermoplastic polymer of the first substrate is fused together with the thermoplastic polymer of the second substrate to form fused portions and unfused portions located between the fused portions. The unfused portions define pockets containing discrete regions of a functional material that is capable of providing comfort to the wearer's foot.

In the Office Action, dependent claims 3, 9, and 14-15 were said to be allowable if rewritten into independent form. Thus, dependent claim 3 has been rewritten into new

independent claim 27 and dependent claim 9 has been rewritten into new independent claim 34. Thus, claims 27-40 are believed to be in complete condition for allowance.

Independent claims 1 and 10, however, were rejected in the Office Action under 35 U.S.C. §102(b) as being anticipated by either U.S. Patent Nos. 5,938,650 to Baer, et al. or 4,892,535 to Bjornberg, et al. Baer, et al. relates to an absorbent core for absorbing liquids, such as a component of a diaper or incontinent device. Likewise, Bjornberg, et al. relates to absorbent pads, such as the type used as incontinence pads. To the contrary, independent claims 1 and 10 are specifically directed to a disposable shoe liner for a shoe. The above-cited references simply do not relate in any manner whatsoever to a shoe liner for use by a wearer of a shoe. Nevertheless, it was stated in the Office Action that the recitations of "shoe liner" in the preamble and "shaped to fit the contours of a foot" do not structurally distinguish the claims from the above-cited references because feet come in many different shapes and sizes. Without commenting on the propriety of this rejection, Applicants have nonetheless amended independent claims 1 and 10 to more positively recite that that the claimed shoe liner is used by a wearer of a shoe, and is thus shaped to fit the contours of and configured to be placed adjacent to the wearer's foot.

For at least the reasons set forth above, Applicants respectfully submit that independent claims 1 and 10 are not anticipated by the cited references. In addition, the above-mentioned references were also cited to reject dependent claims 2, 4-8 and 11-13. Applicants respectfully submit, however, that at least for the reasons indicated above relating to corresponding independent claims 1 and 10, claims 2, 4-8, and 11-13 patentably define over the references cited. However, Applicants also note that the


patentability of dependent claims 2, 4-8, and 11-13 does not necessarily hinge on the patentability of independent claims 1 and 10. In particular, some or all of these claims may possess features that are independently patentable, regardless of the patentability of claims 1 and 10.

As such, for at least the reasons set forth above, Applicants respectfully submit that the present claims patentably define over all of the prior art of record. It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Loney is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this response.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

  
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Jason W. Johnston  
Registration No.: 45,675

DORITY & MANNING, P.A.  
P.O. Box 1449  
Greenville, SC 29602-1449  
Phone: (864) 271-1592  
Facsimile: (864) 233-7342

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